IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 181 of 2007
In
SPECIAL CIVIL APPLICATION No. 8220 of 2006
With
CIVIL APPLICATION No. 2609 of 2007
In LETTERS PATENT APPEAL No. 181 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE ANIL R. DAVE
HONOURABLE MS.JUSTICE H.N.DEVANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DEVENDRA UPENDRABHAI VYAS SON OF LATE UPENDRA M VYAS - Appellant(s)
Versus
THE SECRETARY TO GOVT. OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR PH PATHAK for Appellant(s) : 1,
MR SHIVANG SHUKLA, ASST. GOVERNMENT PLEADER for Respondent(s) : 1,
None for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE ANIL R. DAVE

and

HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 06/03/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE ANIL R. DAVE)

1. Being aggrieved by the order rejecting Special Civil Application No. 8220 of 2006, this Letters Patent Appeal has been filed by the original petitioner.

2. The facts giving rise to the present litigation, in a nutshell, are as under:

2.1. The appellant is son of late Shri Upendra Vyas, who died in harness while in government service on 7.4.1995 and, therefore, an application for appointment on compassionate ground on his behalf was made by his mother, Smt. Jyotibala Vyas. It is pertinent to note that widow of late Shri Upendra Vyas was literate (Std. IV pass) and she could have been given appointment on compassionate ground to a class IV post, but she preferred to wait and opted for a job for her minor son when he became major. The application submitted by the widowed mother had been rejected on 10th August, 2001. Thereafter, another application was made on 15th September, 2001, which had been rejected on 6th November, 2003. Thereafter, another application was made on 5th January, 2004, which was also rejected on 14th July,

2004. Ultimately, the aforesaid petition was filed in 2006.

3. The learned advocate appearing for the appellant has submitted that the learned Single Judge has not given reasons for rejecting the petition, and he has rejected the petition mainly on the ground that in spite of time being granted, the learned advocate for the petitioner had not placed on record a scheme under which compassionate appointment was sought for by the petitioner. The learned advocate has submitted that the said fact stated in the order is incorrect because the learned advocate was not given sufficient time to furnish the scheme.

4. We have seen the record of Special Civil Application No. 8220 of 2006, and upon perusal thereof, we find that the said petition was filed on 10th March, 2006 and was circulated for admission on 19th April, 2006. Possibly, on that day, time was asked for and, therefore, hearing was adjourned to 20th April, 2006. On 20th April, 2006, the learned advocate filed sick-note and therefore hearing had been adjourned to 24th April, 2006. On 24th April, 2006, the learned Single Judge rejected the petition on the ground that the scheme under which the appellant petitioner was seeking compassionate appointment was not placed on record.

5. In our opinion, when a petition is filed claiming any right, the basis on which the right is

claimed for must be made available to the court. If the scheme under which the appellant petitioner was praying for compassionate appointment was not before the learned Single Judge, in our opinion, no fault can be found with the learned Single Judge for rejecting the petition.

6. In spite of the above fact, we wanted to give a second chance to the appellant petitioner and, therefore, we had asked the learned advocate to place on record the policy under which the appellant petitioner was praying for compassionate appointment.

7. It is pertinent to note that this appeal was notified for hearing for the first time on 26th February, 2007. As the learned advocate sought for time, the matter was adjourned to 27th February, 2007. Even on 27th February, 2007 time was asked for and hearing of the appeal was adjourned to 2nd March, 2007. Even on that day, the learned advocate was not having the scheme under which compassionate appointment was prayed for and, therefore, time was sought for by learned advocate Shri Parmar appearing for learned advocate Shri Pathak to place on record the scheme under which the appellant petitioner was praying for compassionate appointment. Time was granted up to 6th March, 2007, that is, today. Today, the learned advocate has placed on record a letter dated 16th December, 1991 incorporating the scheme under which compassionate appointment can be given to the dependent of a deceased government employee, who

had died in harness.

8. First of all, learned advocate Shri Pathak has made an effort to submit that the appeal should be allowed and the matter should be remanded to the learned Single Judge so that the matter can be argued before the learned Single Judge at length.

9. Instead of wasting time by remanding the matter, we called upon the learned advocate to argue the matter, but the learned advocate preferred to submit that the order passed by the learned Single Judge is bad in law and, therefore, it must be quashed and set aside. So as to substantiate his case, he has placed on record an order passed in L.P.A. No. 684 of 2002 in Special Civil Application No.3469/02 dated 20th January, 2003 observing that while rejecting the petition, the learned Single Judge is expected to give reasons and the order, which might be passed by the learned Single Judge, should not be a cryptic order and should contain detailed reasons. The Division Bench of this court had therefore allowed the appeal and had remanded the matter for fresh consideration by the learned Single Judge. Similarly, the learned advocate has relied upon the judgment delivered by the Hon'ble Supreme Court in the case of **State of Orissa v. Dhaniram Luhar, (2004) 5 SCC 568** so as to substantiate his case.

10. Learned advocate Shri Pathak has submitted that the mother of the appellant petitioner was informed

by letters dated 4th December, 1996 and 21st March, 1997 by the Dy. Conservator of Forests, Bhavnagar, that she should apply for compassionate appointment only after the present appellant attains majority and, therefore, the mother of the appellant petitioner was justified in waiting for such a long period. For the said reason, it has been submitted by him that there was no delay and the appellant-petitioner should be given appointment to a class III or IV post on compassionate ground.

11. We have heard the learned advocates and have also gone through the judgments cited before us. Upon perusal of the judgments, it appears that reasons must be given while rejecting the petitions by the Single Judge. In our opinion, the abovestated judgments would not help the appellant-petitioner for the reason that it was not possible for the learned Single Judge to assign any reason for rejecting the petition as the petitioner had not placed on record the basis on which compassionate appointment was prayed for. In absence of the relevant material, the learned Single Judge could not decide the matter on merits and, therefore, he was constrained to reject the petition.

12. In the instant case, as the learned Single Judge could not hear the matter on merits and as he has not given reasons, we have heard the learned advocate at length on merits.

13. It might be true that an intimation might have been given to the mother of the appellant to apply later as the appellant petitioner was minor at the relevant time. In our opinion, even the mother of the appellant could have given an application for getting a job on compassionate ground as she was literate (Standard IV pass) and on the basis of the said educational qualification she could have been given a job by the authorities.

14. So far as other facts of the case are concerned, after hearing the learned advocate we have noted that three different applications made by family members of the late government employee Shri Upendra Vyas had been rejected. The first application had been rejected on 10th August, 2001, the second one was rejected on 6th November, 2003 and the third application was rejected on 14th July, 2004. In our opinion, if the appellant petitioner was aggrieved by rejection of the first application, a petition ought to have been filed immediately thereafter, but instead of approaching this court, two other applications were made before the authority and ultimately the petition had been filed on 10th March, 2006 as stated hereinabove.

15. In our opinion, substantial delay has been caused in filing the petition. It appears that the family has survived for more than 11 years. The Hon'ble Supreme Court has observed in the case of **State of J&K v. Sajad Ahmed Mir, (2006) 5 SCC 766**

that if the main person in the family has expired and the family survives for several years, it may not be necessary to give appointment on compassionate ground to any of the members of the family. In our opinion, the ratio of the said judgment squarely applies to the present case. In the instant case, Shri Upendra Vyas had expired on 7th April, 1995 and the petition praying for appointment on compassionate ground had been filed in 2006. For 11 years the family has survived and, therefore, we feel that, in the instant case, the family was not that much destitute which required prompt help.

16. It is also pertinent to note that mother of the appellant petitioner is literate (Std. IV pass). She could have given an application for appointment on compassionate ground to a class IV post, but for the reasons best known to her and perhaps, as stated by her in one of the applications, as she had to look after the children, she did not opt to apply for a job on compassionate ground, but she waited for years so that one of her minor sons, when becomes major, get appointment on compassionate ground.

17. Learned AGP Shri Shivang Shukla has submitted that the appellant petitioner had a literate sister, who was 18 years old at the time when the appellant had lost his father and,therefore, the job could have been applied for by the literate sister. We ignore the said submission as the said fact was not put on record earlier but the fact remains that the mother

of the appellant, namely, widow of the deceased employee, could have applied for the job, and in that event, she could have been given job, but she did not apply, possibly because she was in a position to maintain the family at that time.

18. For the aforesaid reasons, even after considering the matter afresh and after hearing learned advocate Shri Pathak at length, we feel that even in normal circumstances the petition would have been rejected. In the circumstances, instead of remanding the matter to the learned Single Judge, we have heard the learned advocate for the appellant petition at length and for the reasons stated hereinabove, we dismiss the appeal.

19. In view of dismissal of the appeal, the civil application does not survive and it is disposed of accordingly.

(Anil R. Dave, J.)

(H.N. Devani, J.)

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